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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,152	02/17/2004	Andreas Hefel	RBL0109	1277

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BAKER & DANIELS LLP
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FORT WAYNE, IN 46802

EXAMINER

MAEWALL, SNIGDHA

ART UNIT	PAPER NUMBER
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1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/780,152

Applicant(s)

HEFEL, ANDREAS

Examiner

Snigdha Maewall

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>02/17/04 and 04/23/04</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Summary

1. Receipt of IDS and Preliminary Amendment filed on 02/17/04 and 04/23/04 is acknowledged.

Claims 1-20 are pending in this application, claims 1-20 will be examined on the merits.

Informalities

2. The Title and Abstract of the disclosure recites the phrase "The use of polysaccharides, such as galactomannans, glucomannans and the like, for introducing active substances into the human or animal metabolism is described". The phrase "the like" is indefinite with respect to naming the specific compound. Examiner suggests specifying exact compounds and renaming the title.

DOUBLE PATENTING

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22-41 of copending Application No. 10/595684. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application claims bioavailability of vital substances such as herbal extracts, water-soluble vitamins, fat-soluble vitamins, amino acids etc. in claim 22 and the dependent claim 24. The polysaccharides such as galactomannan and glucomannan are claimed in dependent claim 23. These limitations overlap with the limitations of the instant application that claims the use of polysaccharides, such as galactomannan and glucomannans for introducing active substances in the human or animal metabolism. The vital substances claimed overlap with the vital substances claimed in the copending application such as vitamins, minerals, plant ingredients amino acids etc. The limitations of the claimed interaction between polysaccharide and the vital substances in terms of structure and function (claims 1-20) overlap with claimed structural and functional limitations of the co-pending application (claims 22-41). The only difference between the copending application and the instant application is that the copending application

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recites various species of the vital substances claimed such as vitamins, herbal extracts and amino acids etc.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-3 and 12 provide for the use of polysaccharides but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

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Claim 1 recites the limitation "the like", "vital substances", "individually or as a complex".

These limitations are vague and indefinite because they do not define meets and bounds of the claim. It is unclear as to what applicant means by "vital substances". The term "vital" in claims 1 and 2 is a variable functional limitation, as such does not define the structural limitation.

Claim 2 recites the limitation "other metabolically active substances". It is unclear as to which specific compound is the applicant referring to. The phrase is indefinite and ambiguous. Examiner suggests reciting appropriate and specific compounds.

Claims 3 and 11 recite the limitations "gentle method" and "preferably 0.2-2 mm". These limitations are indefinite; applicant has not defined what "gentle method" is and the word "preferably" is ambiguous because it is not clear whether the limitation as recited (between 0.2-2 mm) is really the limitation? Also the use of parenthesis makes the claim unclear with respect to the intended limitation. Examiner suggests reciting specific limitations.

Claim 5 recites the limitation "undesired manner". The term is indefinite and unclear. It is unclear as to what applicant means by "undesired manner".

Regarding claims 7-8, 11, 15-17 and 19-20 the phrase "the like" renders the claims indefinite because the claim(s) include elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

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Claims 7-8, 11 and 19-20 recite the limitation "filament-like". The recitation of the terms "such as," "the like" and "for example" make the claim indefinite with respect to structure and function. In the instant case recitation of the phrase "filament-like" is unclear.

Claims 15-17 recite the phrases "net-like or lattice-like". As stated above, the use of the terms "the like" makes the claim indefinite. It is not clear what applicant means by net-like or lattice-like? The claims do not define exact structural and functional limitations and are therefore unclear and unspecific.

Claim 9 recites the limitation within parenthesis "in the directions of the arrows 10, 11". It is unclear as to which directions are intended to as 10 and 11. Claim does not define the directions 10 and 11; therefore the claim as recited is unclear.

Claim 11 recites the limitation (H2O envelope 9). Firstly, it is unclear what is envelope 9. Secondly, there is no antecedent basis for this claim. The claim refers to claim 1 and there is not filament-like molecule recited in claim 1. Claim limitations within parenthesis do not further limit the claim rather make the claim indefinite and unclear. Additionally, it is not clear as to how the water provides the envelope in claims 11 and 19-20. The term is confusing as it is not clear if the water is added or is it the examination of the interaction of water and active substances during the process of mixing.

Claims 4, 5 and 6 refer to claim 1 and recite the limitation granules of polysaccharide. there is no antecedent basis for this limitation as claim 1 discloses matrix of polysaccharide but not specifically granules. Matrix does not necessarily mean comprising of granules. Correction is required.

Claims 6, 8 and 15-18 recite the limitation coordinate bond between active substances

and polysaccharide. It is unclear as to how a coordinate bond will be formed with vital substances as claimed by the applicant such as "plant ingredients, coenzymes, amino acids and other metabolically active substances" as claimed in claim 2. Appropriate correction is required.

It is to be noted that there are multiple vague and indefinite claims in the instant application. Applicant is required to make appropriate corrections and recite clear, specific and unambiguous claim limitations. Improper dependencies with no antecedent basis needs to be corrected in order to place the application for proper examination on the merits.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2257358 A.

GB 2257358 A discloses a composition comprising vitamins, enzymes, coenzymes, minerals, trace elements and/or microorganisms that are embedded, separately with regard to function, in carrier substances with formation of protective films against harmful effects so that, with sufficient moisture absorption, in vivo and in vitro biocatalytic processes can be initiated and controlled. Suitable protective substances

are preferably sodium salts and potassium salts of silicic acid and nonionic polysaccharides, in particular from the family consisting of the galactomannans (page 2, paragraph 2 and **claim 5**). The process of mixing and drying is depicted on page 4, paragraph 4, page 7, paragraph, 1 and in example 2). It is further disclosed that the **granulation** can be influenced by the spraying rate and the enzyme powders are obtained in relatively narrow particle size ranges after drying (page 8, paragraph 1).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

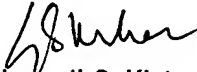
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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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